Supreme Court, U.S.
FILED
OCT 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-500

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1988

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ILLINOIS COMMERCE COMMISSION, *et al.*,
*Petitioners,*

v.

INTERSTATE COMMERCE COMMISSION, *et al.*,
*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

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## BRIEF IN OPPOSITION OF RESPONDENT ASSOCIATION OF AMERICAN RAILROADS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

30 pp

## QUESTIONS PRESENTED

1. Whether the court below erred in finding that the Interstate Commerce Commission acted well within its discretionary authority under 49 U.S.C. § 10505 in exempting from regulation the abandonment of rail lines that have carried no local traffic for at least two years ("out of service" lines).

2. Whether the court below erred in finding that the Commission acted well within its discretionary authority under 49 U.S.C. § 10505 in providing States a period of 60 days in which to seek a stay of an "out of service" line abandonment falling within the exemption in lieu of the previous four months' advance notice generally applicable to non-exempt abandonment proceedings.

3. Whether the court below erred in upholding the Commission's finding that the exemption at issue would have no effect on the Commission's authority to regulate the reasonableness of rates under the Staggers Rail Act.

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## BRIEF IN OPPOSITION OF RESPONDENT ASSOCIATION OF AMERICAN RAILROADS

---

Respondent Association of American Railroads ("AAR"), intervenor-respondent below,[1] respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case. The decision below is reported at 848 F.2d 1246 (D.C. Cir. 1988).

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[1] A list of the member railroads of the AAR is printed in the Appendix to this brief.

## STATEMENT

In the decision below, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit (Mikva J. dissenting in part) upheld an Interstate Commerce Commission ("ICC") decision to exempt rail line abandonments from the requirement of prior ICC approval under 49 U.S.C. §§ 10903-05 where no rail traffic has originated or terminated on the line for at least two years. The ICC decision was a re-adoption of an earlier exemption decision[2] of the ICC which had been remanded by the Court of Appeals for the District of Columbia Circuit to the agency for further consideration.[3] The original deficiencies noted by the court were cured by the ICC in its second decision, and the panel majority below affirmed that decision.[4]

The ICC has a long history of regulating the economic activities of railroads, including the abandonment and discontinuance of rail lines. In part because of intensive regulation, the railroad industry experienced a period of economic decline over the past several decades which led

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[2] Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, 366 I.C.C. 885 (1983) (Petitioner's Appendix at 83a-93a).

[3] *Illinois Commerce Commission v. ICC*, 787 F.2d 616 (D.C. Cir. 1986) (Pet. App. at 44a-82a). The court of appeals also remanded without discussion a related decision of the ICC to exempt from regulation the discontinuance of service and trackage rights. Ex Parte No. 274 (Sub-No. 8A), 1 I.C.C. 2d 55 (1984) (Pet. App. at 94a-98a).

[4] In a recent decision issued September 9, 1988, the Court of Appeals for the Eleventh Circuit upheld the ICC's exemption regulations as applied in a particular proceeding against a claim that the regulations were "ultra vires" because they conflicted with the requirements of 49 U.S.C. § 10903. *Fannin County, Georgia v. United States*, 856 F.2d 120 (11th Cir. 1988). The petitioners in *Fannin*, however, did not otherwise challenge the validity or reasonableness of the exemption regulations, and the Eleventh Circuit had no occasion to rule on the issues raised in the instant petition.

to the collapse of ten large eastern and mid-western railroads in the 1970's. *See Blanchette v. Connecticut Gen. Ins. Corps.*, 419 U.S. 102, 108-09 (1974). Congress responded to the financial crisis in the railroad industry through enactment of three comprehensive amendments to the regulatory powers of the ICC. The first was the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 ("3R Act"), which dealt principally with the immediate financial problems of railroads in the midwest and east and which led to the creation of Conrail. The second act, the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 ("4R Act"), constituted the first general reform of the ICC's regulatory powers. In the abandonment area, Congress found that the unnecessary retention of underutilized rail lines contributed greatly to the railroads' financial straits, and that unnecessary and burdensome regulation of abandonments exacerbated the railroads' problems. Congress accordingly enacted specific timetables under which the ICC must act on abandonment applications. 4R Act, § 802. The third, and most significant, of the reform legislation was the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 ("Staggers Act"). Congress in the Staggers Act adopted an even more stringent timetable for Commission consideration of abandonment applications and also created a mechanism for transfer of lines approved for abandonment to financially responsible parties wishing to preserve those lines through purchase or subsidy. Staggers Act, § 402, codified at 49 U.S.C. §§ 10903-05.

Even more significant than the abandonment-related provisions of the reform legislation, was the new deregulatory approach endorsed by Congress in the Staggers Act. In enacting the Staggers Act, Congress found that "today, most transportation within the United States is competitive;" that "many of the government regulations affecting railroads have become unnecessary and inefficient;" and that "modernization of economic regulation

for the railroad industry with a greater reliance on the marketplace is essential in order to achieve maximum utilization of railroads. . . ." Staggers Act, § 2 (set forth as a note to 49 U.S.C. § 10101a).

To implement the deregulatory policies underlying the Staggers Act, Congress enacted numerous reforms to the then-existing system of rail regulation. These reforms (drawing in part upon the 4R Act) greatly freed the railroad industry from the constraints of unnecessary regulation by, *inter alia*, restricting the ICC's jurisdiction over the maximum reasonableness of rates to those instances where the carrier possesses "market dominance" over a particular movement;[5] by providing carriers with the same flexibility as other private sector enterprises to tailor their rate and service arrangements with customers through private contracts (in lieu of filing public tariffs) 49 U.S.C. § 10713; and by requiring state regulators to follow federal policy in regulating the intrastate activities of interstate railroads within their jurisdictions to avoid conflicting regulatory schemes. 49 U.S.C. § 11501.

In enacting the 4R and Staggers Acts, Congress also specifically delegated to the ICC the power to exempt from regulation transactions and services related to the provision of rail transportation. In broadening the exemption authority previously conferred by the 4R Act, Congress directed the ICC in the Staggers Act to exempt a person, class, transaction, or service whenever the ICC finds that application of a provision or provisions of the Interstate Commerce Act is: (1) not necessary to carry out the rail transportation policy and (2) either the transaction or service is of limited scope or regulation is not necessary to protect shippers from abuse of mar-

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[5] "Market dominance" is defined as "an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. § 10709(a).

ket power. Staggers Act, § 213; codified at 49 U.S.C. § 10505(a). Congress provided only three areas in which the Commission's exemption power could not be exercised: (1) to relieve a carrier from its obligation to provide contractual terms for liability for claims; (2) to authorize intermodal ownership otherwise prohibited by the Act; and (3) to relieve a carrier of its obligation to protect the interests of employees. 49 U.S.C. § 10505. Congress also accorded the ICC the power to revoke an exemption whenever it finds that application of any part of the Interstate Commerce Act is indeed necessary to carry out the rail transportation policy. 49 U.S.C. § 10505(d).[6]

In enacting the new exemption provision under Staggers, Congress expressly found that the ICC, and not Congress, is best suited to identify specific areas in which the public will benefit from deregulation.[7] Indeed, Congress recognized that the ICC's new exemption power is a cornerstone of the Staggers Act.[8] Through the exemption power, Congress charged the ICC with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards[9] and intended that as many ICC regulations and restrictions as possible were to be removed through use of the exemption process.[10] As a result, courts reviewing

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[6] The various elements of national rail transportation policy are set forth at 49 U.S.C. § 10101a.

[7] *See* H. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 105, reprinted in 1980 U.S. Code Cong. & Admin. News 4110, 4137.

[8] *See* H. Rep. No. 1035, 96th Cong. 2d Sess. 60, reprinted in 1980 U.S. Code Cong. & Admin. News 3978, 4005; see also *Illinois Commerce Comm'n v. ICC*, 749 F.2d 875, 885 (D.C. Cir. 1984) (deregulation through exemption process overriding purpose of act), *cert. denied*, 474 U.S. 820 (1985).

[9] *See* H. Rept. No. 1035 at 60, *reprinted in* 1980 U.S. Code Cong. & Admin. News at 4005.

[10] *See* H. Rept. No. 1430 at 105, *reprinted in* 1980 U.S. Code Cong. & Admin. News at 4137.

ICC exemption decisions have recognized that the agency's delegated power to exempt is broad and that Congress anticipated that the exemption power would be widely used as an effective instrument of national transportation policy.[11]

The ICC adopted the out-of-service line exemption at issue pursuant to its broad statutory mandate under the exemption provision. The panel majority below, in upholding the ICC's exemption decision, concluded that the exemption, "predicated as it is on the agency's experience, is entirely in keeping with the deregulatory thrust of the Staggers Act." Pet. App. at 17a.

## ARGUMENT

### I. PETITIONERS HAVE FAILED TO PRESENT ANY SIGNIFICANT LEGAL ISSUE WARRANTING REVIEW BY THIS COURT

#### A. The Decision Below Is Not of Major Importance

In the instant case, the panel majority below has affirmed an ICC decision to exempt from regulation the abandonment of rail lines over which no rail traffic has originated or terminated for at least two years. The exclusive and plenary authority of the ICC to regulate abandonments—including abandonments of lines of interstate carriers used solely in intrastate commerce—is firmly established. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981); *Colorado v. United States*, 271 U.S. 153 (1928). The principal issue

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[11] *See Simmons v. ICC*, 760 F.2d 126, 132 (7th Cir. 1985) (legislative history of section 10505 indicates Congress wanted exemption power to be wielded boldly), *cert. denied*, 474 U.S. 1055 (1986); *Coal Exporters Ass'n of United States v. United States*, 745 F.2d 76, 82 (D.C. Cir. 1984) (no doubt exemption provision intended to give ICC very broad authority to elimintae unnecessary regulation), *cert. denied*, 471 U.S. 1072 (1985); *American Trucking Ass'ns v. ICC*, 656 F.2d 1115, 1121 (5th Cir. 1981) (Congress has chosen not to define narrowly ICC's exemption authority).

raised by petitioners—the sufficiency of notice provided the states to seek to stay abandonments under the exemption—is essentially nothing more than an issue of whether the agency properly exercised its discretion in establishing a procedural schedule for the expeditious processing of "out of service" line abandonments falling within the exemption that would allow the states effective participation in challenging the use of the exemption in a particular case.[12] In its decision below, the ICC concluded that the states will continue to receive adequate notice of proposed abandonments under the exemption pursuant to the specific notice provisions incorporated in the exemption regulations which provide (in lieu of the four months' statutory notice otherwise applicable) that the exemption would not be effective until at least 60 days after the states are notified of a proposed abandonment. The panel majority below affirmed the ICC's decision with respect to the notice period as a "classic line-drawing choice" that the majority found reasonable. Pet. App. at 16a. In light of the limited scope of the exemption at issue before the agency (rail lines not used by local shippers for at least two years) and the "classic line-drawing" nature of the agency decision at issue, there is simply no issue of national importance warranting this Court's review.

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[12] Petitioners further claim that "the court of appeals defined rate reasonableness in a manner in conflict with the statute" in upholding the Commission's exemption (Pet. App. at 12) does not raise a significant issue because petitioners' reading of the relevant statutory provision and judicial caselaw is patently wrong. This point is discussed *infra* at 13-15.

Petitioners' introductory argument that the court below misconstrued the Staggers Act as an act to "deregulate" the railroads (Pet. App. at 9) also does not raise a significant issue. It is, at bottom, a semantic quibble over the scope of the term "deregulated." The ICC, the Congress, and the court below properly construe the term to mean "subject to less regulation than previously" rather than "wholly free from regulation." See, H. Conf. Rep. No. 1430, 96th Cong. 2d Sess. at 105.

### B. Notice to States of An Abandonment Under the Exemption Is Fully Sufficient to Protect State Interests

Moreover, on the merits, the notice afforded to states under the Commission's exemption procedure is fully adequate to protect the states' interests in the "out of service" line abandonments at issue as both the Commission and the panel majority below properly found. Indeed, only a single state agency participant to the agency proceeding below (the Illinois Commerce Commission) challenges the Commission's decision before this Court as allegedly providing "inadequate" notice to the states.[13] And, even more telling, is petitioners' failure to assert, let alone explain, *why* sixty days' notice is insufficient.

Pursuant to the general statutory requirements applicable to the processing of abandonment applications, carriers are required to adhere to a detailed procedural schedule and to comply with numerous other statutory requirements and Commission regulations designed to afford interested parties—particularly affected shippers and states—an opportunity to challenge particular abandonments before they become effective. 49 U.S.C. §§ 10903-10904. Other applicable statutory provisions relating to abandonments provide opportunities for interested parties—including shippers and governmental agencies—to continue service on a line approved for abandonment through offers of purchase or subsidy. 49 U.S.C. § 10905. The statutory requirements applicable to regulated abandonments generally provide for advance public notice of potential abandonment applications by requiring a carrier to include lines potentially subject to abandonment on a

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[13] In the Commission's original rulemaking proceeding, 44 parties participated, including several state agencies. Pet. App. at 83a. Only the Illinois Commerce Commission (jointly with union petitioner Patrick W. Simmons) seeks further judicial review of the Commission's exemption regulation adopted in the agency proceeding after judicial remand.

System Diagram Map. 49 U.S.C. § 10904(e)(2). Where an abandonment application is protested, the statute further provides that the Commission may generally not issue a certificate of abandonment unless the line which is the subject of the abandonment application has been listed on the System Diagram Map for at least four months prior to the filing of the abandonment application. 49 U.S.C. § 10904(e)(3).

In its decision adopting the exemption for "out of service" lines at issue, the Commission found that application of the full range of statutory and regulatory requirements pertaining to abandonments for segments of line that (1) served no local shippers for two years, and (2) carried "overhead" traffic that could be efficiently rerouted to other lines, was simply "not necessary" to serve the national transportation policy as set forth in 49 U.S.C. § 10101a.[14] In so holding, the Commission found, *inter alia*, that such abandonments would result in no loss of service to shippers. The Commission further found that an exemption from regulation would actively serve Congressional policy by eliminating unnecessary regulation and by permitting the railroads to effect money-saving efficiencies with a minimum of delay. Pet. App. at 110-111a.

In adopting the exemption, however, the Commission was fully mindful of the need of various parties—particularly state agencies and the Department of Defense—to be able to monitor abandonments of "out of service" lines filed under the exemption in order to permit the effective filing of stay petitions whenever necessary. The Commission thus carefully tailored its exemption regulations to allow—in lieu of the four months' System Dia-

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[14] The Commission also found that the exemption satisfied both of the alternative requirements of the second prong of 49 U.S.C. § 10505 in that it was of limited scope and application of the abandonment provisions was not needed to protect shippers from an abuse of market power. Pet. 108a-109a.

gram Map statutory notice otherwise applicable to regulated abandonment proceedings—a lesser period of notice that the agency considered was fully sufficient to provide notice to the states and allow them to seek to stay individual abandonments. The notice period provided by the Commission requires that (1) railroads invoking the class exemption notify affected states (and DOD) at least 10 days prior to the filing of a notice of exemption; (2) that the ICC publish the notice of exemption within 20 days after filing; (3) that states and other interested parties be permitted to file petitions for stay of a particular abandonment; and (4) that an abandonment not become effective until at least 60 days after the states (and DOD) first receive notice. The agency also ensured that the states (and other interested parties) would still be able to preserve "out of service" lines for future use in the event they so desired by retaining their ability under the exemption provisions to subsidize or purchase a line falling within the exemption. Pet. App. at 107-108a.

Both before the ICC and the court below, petitioners challenged the agency's exemption decision as failing to afford the states adequate advance notice of an abandonment covered by the exemption. Petitioners' challenge to the ICC's exemption decision, however, was not predicated on an alleged lack of statutory authority to grant the exemption pursuant to 49 U.S.C. § 10505. (Indeed, Congress, although precluding the Commission from exercising its exemption authority in three specific areas as discussed *supra* at 5, made no exception for statutory provisions relating to abandonments as set forth in 49 U.S.C. § 10903-10905.) Petitioners' claim was instead based on the Commission's alleged failure to properly find that retention of the statutory notice provisions relating to abandonments was "necessary" to carry out one of the numerous goals of the Staggers Act, i.e., "to cooperate with the States in transportation matters to assure that intrastate regulatory jurisdiction is exercised in ac-

cordance with the standards established in this subtitle." 49 U.S.C. § 10101a(9).[15]

In its decision below, the panel majority upheld the Commission's conclusion "that the benefits of the additional notice [under the four month System Diagram Map requirement] accruing to the small number of States and shippers affected by abandonments of out-of-service lines are outweighed by the costs of railroads both in maintaining the Maps and in delaying desired abandonments for four months." Pet. App. at 15-16a. The panel majority, based on the Commission's assessment of the 60 days' notice provision as fully sufficient to permit state participation in "out of service" line abandonments and on the Commission's finding that individual states on their own initiative had the ability to continue to monitor the activity of lines not serving local shippers in the absence of the System Diagram Map requirement, further found an "absence of indications that additional notice is necessary to promote cooperation with the States." Pet. App. at 16a.

The panel majority was eminently correct in upholding the Commission's "classic line-drawing choice of sixty days' notice" as reasonable. There is simply nothing in the record in the rulemaking proceeding below to even remotely indicate that the states would be adversely affected by the exemption regulation adopted by the Commission, or that the 60 days' notice provision is not fully sufficient for their needs. Indeed, any finding to the contrary is wholly speculative.

Judge Mikva, dissenting solely on the "adequacy of state notice" issue in the decision below, offers no specific grounds why the notice period adopted by the Commission would not *in fact* be fully adequate to serve state

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[15] In making this argument, petitioners conveniently ignored the other fourteen stated goals of the Staggers Act, including, *inter alia*, "to reduce regulatory barriers to entry into and exit from the industry." 49 U.S.C. § 10101a(7).

interests with respect to the "out of service" line abandonments at issue. Instead, Judge Mikva simply finds, in conclusory fashion, that "[o]bviously, these severe time constraints will make it extremely difficult, if not impossible, for states to carry out their responsibilities with respect to exempt abandonments." Pet. App. 37a.

At bottom, Judge Mikva's dissent is essentially predicated on his view that retention of the statutory System Diagram Map requirement might have been a *more* accommodating approach for the agency to have taken because it would provide an additional period of notice to the states while allegedly not greatly hindering the effectiveness of the exemption. Pet. App. at 40a. The agency, however, expressly disagreed with this approach when it specifically addressed the notice issue below, and the panel majority upheld the agency's determination as "well-reasoned" and well within the agency's statutory discretion.[16] Under such circumstances, the Commission's decision must be affirmed. As this Court has repeatedly stressed, "a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1970).

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[16] Judge Mikva in his dissent was also of the view that the Commission failed to explain adequately how the states could monitor the lines subject to the exemption in the absence of System Diagram Map notice because the lines still carried overhead traffic. Judge Mikva thus rejected the "notion that states should scrutinize active rail lines within their borders, ascertaining which are the segments that generate no local traffic and whose overhead traffic could be rerouted" as "patently ludicrous." Pet. App. at 38a. Judge Mikva, however, cites no record evidence whatsoever supporting this abstract conclusion, and it is wholly feasible that states could in fact monitor the use of individual rail lines within the state based, *inter alia*, on the activity of local industry and the existing route network of railroads as the ICC below expressly found and which the panel majority upheld as a reasonable conclusion. Indeed, the wholesale lack of interest in this issue by state interests speaks volumes as to the reasonableness of the ICC's approach.

## II. THE DECISION BELOW IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT OR ANY OTHER COURT

Petitioners claim that the court below, in unanimously affirming the ICC's conclusion that the exemption at issue would have no effect on the reasonableness of rates or the Commission's rate reasonableness jurisdiction, "defined rate reasonableness in a manner in conflict with the statute and decisions by other courts." Pet. App. 12-13. Petitioners' contention is frivolous.

In its decision below, the ICC found that the exemption at issue would not affect the reasonableness of carrier rates over rerouted traffic because a carrier does not compete with itself and its ability to establish rates for rerouted traffic is simply unaffected by its use of the "out of service" exemption. Thus, as the Commission explained, if the traffic at issue were previously subject to competition from other modes or sources (i.e., if "market dominance" did not exist), use of the exemption would not alter the competitive situation: the carrier's rates would still be set competitively as before. Pet. App. at 109a. As the Commission further noted, where market dominance does not exist the Commission simply has no jurisdiction to challenge carrier rates as exceeding maximum reasonableness—the essential premise of the Staggers Act is that competitively-set rates are assumed reasonable. Pet. App. at 102a. Where "market dominance" previously existed, the Commission further found that its jurisdiction to regulate the maximum reasonableness of the rate at issue would also remain unaffected by the exemption, i.e., the exemption would in no manner affect the "market dominant" nature of rerouted traffic. Pet. App. at 102a, 109a.

In the court of appeals (as before the ICC) petitioners challenged the ICC's "rate reasonableness" explanation by claiming that a rate can be "unreasonable" under the Staggers Act even in the *absence* of a market dominance determination, and that the Commission's inability to

regulate "lawful but unreasonable rates" (which allegedly could result from the exemption) was not taken into account by the agency. Petitioners' reasoning, as set forth in the petition, is that because a determination of "market dominance" does not give rise to a presumption of rate unreasonableness (as specifically provided by statute, 49 U.S.C. § 10709(c)), and because various courts have noted that "market dominance" and rate unreasonableness "are two distinct concepts,"[17] a rate can be "unreasonable" even though "market dominance" (and Commission rate reasonableness jurisdiction) does not exist. Pet. App. at 12-14.

The court below (and the ICC) had no difficulty in rejecting petitioners' contention that a rate can be "unreasonable" under the Staggers Act in the absence of a market dominance determination. As succinctly explained by the court below:

> Illinois questions the ICC's reliance on its authority to regulate rates as sufficient to prevent carriers' imposing unreasonable rates following on the heels of an abandonment, asserting that a rate can be "unreasonable" yet lawful and thus beyond the ICC's rate-regulatory reach. . . . Illinois cites no authority for this proposition, however. This should come as no surprise. The ICC is empowered to regulate any unreasonable rate charged by a carrier with market dominance. 49 U.S.C. § 10709. In the absence of such dominance, however, the statute assumes that competition in the marketplace will, as it were, "regulate" rates; all rates outside a market-dominant setting are presumed to be reasonable (and thus lawful). The ICC is without power, either with or without the exemption for "out of service" lines, to alter lawful rate increases.

Pet. App. at 11a. Moreover, as the court of appeals further found, the cases relied upon by petitioners in sup-

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[17] See *General Chemical Corp. v. United States*, 817 F.2d 844, 847 (D.C. Cir. 1987); *New England Power Co. v. United States*, 693 F.2d 239, 240 (1st Cir. 1982) (as cited by petitioners).

port of their novel asertion that rates can be unreasonable, yet lawful and beyond the ICC's power to regulate, established only the unassailable proposition "that the ICC may not find a rate unreasonable unless it has established market dominance." Pet. App. at 11a, n. 10.

The reasoning set forth by the court below in rejecting petitioners' wrongheaded "rate reasonableness" argument is unquestionably correct and the court's explanation cannot be improved upon. Moreover, petitioner fails to cite one case even remotely supporting its proposition that a rate can be unreasonable, yet lawful—much less that there is a conflict in the circuits on the issue. There is not, and could not reasonably be, such a conflict on this issue.[18]

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to review the judgment of the court of appeals in this case should be denied.

Respectfully submitted,

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[18] Petitioner also revives its argument, rejected by both the Commission and a unanimous court of appeals, that a carrier's ability to engage in "short-line" ratemaking (i.e., to set rates based on the assumption that its shortest-available route would be used) would be impaired by the exemption. As both the ICC and the court found, carriers are as free as before to set whatever rates they wish on rerouted traffic, subject only to the Commission's maximum and minimum reasonable rate jurisdiction. Pet. App. at 11a.

# APPENDIX

## APPENDIX

### AAR MEMBERSHIP LIST

Alton & Southern Railway

Atchison, Topeka & Santa Fe Railway Company

- Alameda Belt Line RR Co.
- Central California Traction
- Denver Union Terminal Rwy. Co.
- Kansas City Terminal Railway
- Oakland Terminal Railway
- Sunset Railway Company
- Texas City Terminal Railway
- Wichita Union Terminal Rwy. Co.
- Harbor Belt Line RR Co.
- St. Joseph Terminal RR. Co.
- Los Angeles Junction Rwy. Co.

Bangor & Aroostook Railroad Company

- Van Buren Bridge

Belt Railway Company of Chicago

Bessemer & Lake Erie Railroad Company

Birmingham Southern Railroad Company

The Lake Terminal RR Co.

McKeesport Connecting Railway Co.

Burlington Northern Railroad Company

- Camas Prairie
- Davenport Rock Island & NW
- Denver Union Terminal
- Galveston Terminal Railway
- Iowa Transfer Railway
- Kansas City Terminal
- Lake Superior Terminal & Transfer Railway of Wisconsin
- Longview Switching Co.
- MT Properties, Inc.
- Portland Terminal RR

Paduca & Illinois
Terminal RR Assn. of St. Louis
Witchita Union Terminal Rwy. Co.
Winona Bridge

Cambria & Indiana Railroad Company

Canadian National Railway (Lines in U.S.)
Lines in New England
Lines in New York
Lines in Michigan
Lines in Vermont
Minnesota & Manitoba RR

Canadian Pacific Limited (Lines in U.S.)
Lines in Maine
Lines in Vermont

Chicago & Illinois Midland Railway Company

Chicago & North Western Transportation Company
Iowa Transfer Railway
Kansas City Terminal Rwy.
Lake Superior Term. & Trans. Rwy. Co. of Wisconsin
MT Properties
Western Railroad Properties

CSX Transportation. Inc.
Grainsville Midland
Carrolton RR Co.
Western Rwy. of Alabama
B&O Chicago Terminal RR
Curtis Bay
Akron & Barberton Belton RR Co.
Chicago & Western Indiana RR Co.
Monongahela Rwy. Co.
Nicholas, Fayette & Greenbriar
Norfolk & Portsmouth Belt Line RR
Paducah & Illinois
Terminal RR Assn. of St. Louis
Woodstock & Blockton RR

Consolidated Rail Corporation
- Akron & Barberton Belt RR
- Albany Port Railroad Corp.
- Calumet Western Rwy.
- Chicago & Western Indiana RR Co.
- Indiana Harbor Belt RR Co.
- Monongahela Rwy. Co.
- Pittsburgh, Chartiers & Youghiogheny Rwy.

Denver & Rio Grande Western RR
- Denver Union Terminal Rwy. Co.

Detroit & Mackinac Railway Company

Duluth, Missabe & Iron Range Railway Company

Elgin, Joliet & Eastern Railway

Galveston, Houston & Henderson Railroad

Grand Trunk Western Railroad
- Chicago & Western Indiana RR Co.

Green Bay & Western Railroad Company
- Ahnapee & Western Rwy. Co.
- Winona Bridge RR
- Michigan & Western RR

Houston Belt & Terminal Railway Company

Kansas City Southern Railway Company
- Arkansas & Western Railway
- Fort Smith & Van Buren Rwy. Co.
- Kansas & Missouri Rwy. Term. Co.
- Kansas City Terminal Rwy.

Louisiana & Arkansas Railway Company

Manufacturers Railway Company

McCloud River Railroad Company

Missouri-Kansas-Texas Railroad Company
- Kansas City Terminal Rwy.
- Texas City Terminal Rwy.
- Terminal RR Assn. of St. Louis
- Oklahoma, Kansas & Texas RR Co.

Norfolk & Western Railway Company
- Akron & Barberton Belt
- Chesapeake Western Rwy.
- Chicago & Western Indiana RR Co.
- Des Moines Union Rwy. Co.
- Fort Wayne Union Rwy. Co.
- Kansas City Terminal Rwy.
- Norfolk & Portsmouth Belt Lines
- Terminal RR Assn. of St. Louis

Pittsburgh & Lake Erie Railroad Company
- Monongahela Rwy. Co.
- Pittsburgh, Chartiers & Youghiogheny
- Youngstown & Southern Rwy. Co.

Peoria & Pekin Union Rwy.

Prescott & Northwestern Railroad Company

Richmond, Fredericksburg & Potomac Railroad Company

St. Louis Southwestern Railway Company
- Arkansas & Memphis Rwy. Br. Term.
- Kansas City Terminal Rwy. Co.
- Southern Illinois & Mo. Br. Co.
- Terminal RR Assn. of St. Louis

Soo Line Railroad Company
- Davenport, Rock Island & N.W. Rwy.
- Indiana Harbor Belt Railway
- Kansas City Terminal Rwy.
- Lake Superior Term. & Transfer
- MT Properties

Southern Pacific Transportation Company
- Central California Traction Co.
- Harbor Belt Lines RR Co.
- Northwestern Pacific Railroad
- Portland Terminal Railroad
- Portland Traction Co.
- Sunset Railway Co.
- Visalia Electric RR Co.

Southern Railway Company
- Alabama Great Southern RR Co.
- Algers, Winslow & Western
- Atlanta & East Carolina Rwy.
- Camp LeJeune RR Co.
- Carolina & Northwestern RR Co.
- Central of Georgia RR Co.
- Cincinnati, New Orleans & Texas Pacific
- Georgia Northern Rwy. Co.
- Georgia Southern & Florida Rwy.
- Interstate RR Co.
- Live Oak Perry and South Georgia
- Louisiana Southern Railway
- New Orleans Terminal Co.
- Norfolk & Portsmouth Belt Line
- St. Johns River Terminal
- State University RR Co.
- Tennessee, Alabama & Georgia Rwy.
- Tennessee Railway Co.
- Terminal RR Assn. of St. Louis
- Woodstock & Blockton RR Co.

Texas Mexican Railway Company

Union Pacific Railroad Company
- Alameda Belt Line
- Arkansas Memphis Rwy Br & Term
- Brownsville & Metamoros Bridge Term.
- Camas Prairie
- Central California Traction
- Chicago & Western Indiana RR Co.
- Denver Union Terminal
- Harbor Belt Line
- Kansas City Terminal Rwy. Co.
- Longview Switching Co.
- Oakland Terminal Rwy. Co.
- Ogden Union Railway Depot Co.
- Portland Terminal RR

Portland Traction Co.
St. Joseph Terminal Co.
Southern Illinois & Missouri Br. Co.
Terminal RR Assn. of St. Louis
Texas City Terminal Rwy.
Pueblo Union Depot RR

Union Railroad Company

Vermont Railway Incorporated
Clarendon & Pittsford RR Co.

Winston-Salem Southbound
High Point, Thomasville & Denton

## ASSOCIATE MEMBERS

Alaska Railroad

Apalachicola Northern Railroad Company
Atlanta & St. Andrews Bay Railway Company

Belfast & Moosehead Lake Railroad Company

California Western Railroad
Central Western Railway Corporation
Centromen Puru Incorporated
Chicago, Central, and Pacific Railroad Company
Chicago Missouri & Western Railway
Chicago South Shore & South Bend Railroad
Chicago Rail Link
Cities Services Company Railroad
Colorado & Wyoming Railway Company

Dardanelle & Russellville Railroad Company
Delray Connecting Railroad Company

East Erie Commercial Railroad
East Jersey Railroad and Terminal Company
East St. Louis Junction Railroad Company

French National Railroads
Fruit Growers Express Company

Genesee & Wyoming Railroad Company
Government of Canada
Grafton & Upton Railroad Company
Graysonia, Nashville & Ashdown Railroad Company
Great Western Railway Company

Hamersely Iron Pty. Ltd. (Western Australia)
Hartford & Slocomb Railroad Company
Hillsdale County Railway Company, Inc.

India, Gov't of: Ministry of Railways (India)

Japanese National Railway (Japan)

Lake Superior & Ishpeming Railroad
Lenawee County Railroad Company, Incorporated
Louisiana & Delta Railroad
Louisiana & North West Railroad Company

Maryland & Pennsylvania Railroad Company
Metro North Commuter Railroad Company
MidSouth Rail Corporation
Minnesota, Dakota & Western Railway Company
Monongahela Connecting Railroad Company

New Orleans Public Belt Railroad
Northeast Illinois Railroad Corporation

Pacific Fruit Express Company
Paducah & Louisville Railway, Incorporated
Pickens Railroad—National Railway Utilization Corporation
Pittsburgh & Shawmut Railroad Company
Port Authority of New York & New Jersey, The
Providence & Worcester Company
Public Transport Commission of New South Wales (Australia)

Roberval & Saguenay Railway Company (Canada)

San Diego & Imperial Valley Railroad
Southern Indiana Railway, Inc.

Texas & Northern Railway Company

Upper Merion & Plymouth Railroad Company

Victoria A Minas Railway (Brazil)

Wabush Lake Railway Ltd. (Canada)
Washington Terminal Company

Special Canadian and Mexican Members:

Canadian Lines (In Canada)
Algoma Central Railway
British Columbia Hydro & Power Authority
British Columbia Railways

Canadian National Railways
Canadian Pacific Limited
Ontario Northland Railway
Toronto, Hamilton & Buffalo Railway
VIA Rail Canada
White Pass & Yukon Corporation Ltd.

Mexican Lines (In Mexico)
Ferrocarril Chihuahua Al Pacifico
Ferrocarril Sonara-Baja California, S.A. de C.V.
Ferrocarril del Pacifico, S.A. de C.V.
National Railways of Mexico